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REMARKS

Status Summary

Claims 1-22 are pending in the present application. Claims 1-22 presently stand rejected under 35 U.S.C. § 102(b). Claims 1, 9 and 17 have been amended herein. No new matter has been added.

Claim Rejections - 35 U.S.C. § 102

Claims 1-22 presently stand rejected by the Examiner under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,003,757 to Hill.

(i) The Examiner's Contentions

The Examiner has maintained his position substantially as cited in the Office Action dated February 24, 2005. Specifically, with reference to claims 1, 9, 17, 2, and 10, it is the Examiner's position that Hill discloses a chute apparatus comprising: a chute flap/deflector (**14**) in open/closed positions & pivotally attached to the housing; a retaining flap/mounting bracket (**40** & T-swivel **20**) moveably attached to the housing, so the retaining flap/bracket's at least one portion can move generally in the vertical direction; and a retaining flap that is independent of the (chute) flap, or not part or integral of the (chute) flap.

The Examiner further contends that Hill discloses: the retaining flap having first & second sections perpendicular to each other (referencing present claims 17, 7, and 15); the chute flap and/or retaining flap being biased in the open or closed positions

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(referencing present claims 3, 11, 6, and 14); the chute flap comprising flange & wall portions (referencing present claims 4 and 12); the retaining flap, for example via ref **30**, cross portion, pivotally attached to the housing (referencing present claims 5 and 13); and the chute flap & the retaining flap rotatable about substantially perpendicular axes (referencing present claims 22, 8, and 16). The Examiner also states that the structure disclosed by Hill renders method claims 18-21 inherent.

Referencing the amendments and remarks filed by applicant in Amendment C, the Examiner contends that in regards to applicant's argument that the movement of the retaining flap/bracket is not independent of the chute flap, it is noted that all of claims 1, 18 and 20 recite the movement conditionally (i.e., the prior art only required to be capable of). Therefore, according to the Examiner, the claimed language does not constitute a limitation in any patentable sense. The Examiner further contends that the prior art's retainer is capable of being moved independently of the chute flap, for example, when disassembled, because the retainer is not integral with the chute flap.

These positions are respectfully traversed as described further below.

(ii) Applicant's Response

Hill discloses a close-trim discharge deflector assembly for a lawn mower. The deflector assembly includes a deflector **14** attached to a mounting bracket **40** (Hill column 3, lines 19-20 and Figures 3 and 5) that is hinged to a mower deck **12** wherein the deflector assembly is pivotable both horizontally and vertically using a T-shaped swivel **20**. T-shaped swivel **20** comprises a shaft **22** and a cross portion **30**.

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T-swivel shaft **22** acts as a hinge pin to allow T-swivel **20** to rotate with respect to mower deck **12** in the horizontal plane for the rotation of deflector **14** in the horizontal direction. T-swivel cross portion **30** includes a sleeve **32** and a pin **34**, which extend through holes **36**, **38** in mounting bracket **40** (that is fixedly attached to deflector **14**). Pin **34** retains mounting bracket **40** and deflector **14** on T-swivel **20** and allows deflector **14** to be rotated in the vertical direction. A single spring **52** is attached between deflector **14** and mower deck **12** such that deflector **14** is biased in a horizontal and extended position. Deflector **14** may be latched by a spring latch **56** and catch **58** such that when deflector **14** is moved to a minimum clearance or closed position, deflector **14** can be retained in that position by moving the end of latch **56** over catch **58**.

With respect to the amendments and remarks presented by applicant in Amendment C, the Examiner maintains that Hill discloses that the retaining flap is independent of the (chute) flap, or not part or integral of the (chute) flap. Additionally, the Examiner states that the claims of the present subject matter recite the independent movement of the retaining flap with respect to the chute flap as conditional movement and that the retaining flap of Hill is capable of being moved independently of the chute flap, for example when disassembled, because the retaining flap is not integral with the chute flap.

While independent claims 1, 9 and 17 of the present subject matter have been amended herein to better clarify the positive recitation of the retaining flap being movable independent of the chute flap, applicant notes that as shown in Figures 3

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and 5 (and in phantom in Figures 2 and 4) of Hill and specifically described (for example at column 3, lines 19-20), mounting bracket **40** is attached to chute deflector **14**. This attachment of mounting bracket **40** to deflector **14** is a fixed attachment when mounting bracket **40** and deflector **14** are attached to mower deck **12**, such that when mounting bracket **40** is rotated about T-swivel cross portion **30** (including sleeve **32** and pin **34**) in a vertical direction, deflector **14** is concurrently rotated. Likewise, when deflector **14** is rotated in the horizontal axis about T-swivel shaft **22**, mounting bracket **40** is also rotated horizontally. This fixed attachment of mounting bracket **40** to deflector **14** is required in order for chute deflector **14** to be rotated vertically about T-swivel cross portion **30** and is required in order for chute deflector **14** to be rotated horizontally about T-swivel shaft **22**. While the Examiner states that the retaining flap (mounting bracket **40**) of Hill is capable of being moved independently of the chute flap (deflector **14**) when disassembled, applicant notes that the fixed attachment of mounting bracket **40** to deflector **14** would not allow mounting bracket **40** to move independent of deflector **14** when the parts are attached to the housing of a mowing machine, as is described in the claims of the present subject matter.

Independent claim 1 of the present subject matter recites a chute flap attached to a housing of a mowing machine and being movable between a closed chute flap position and an open chute flap position, and a retaining flap moveably attached to the housing and being movable independent of the chute flap between a retaining position and a non-retaining position wherein the retaining flap can in its retaining

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position provide support to maintain the chute flap in either its closed or open chute flap position. As described above, Hill teaches and discloses that mounting bracket **40** (i.e., what the Examiner refers to as the “retaining flap”) is attached to deflector **14** (chute flap) when the chute flap and retaining flap are attached to the housing, such that mounting bracket **40** and deflector **14** both rotate vertically about T-swivel cross portion **30** and both rotate horizontally about T-swivel shaft **22**. This design of the retaining flap (mounting bracket **40**) of Hill requires that the retaining flap not be movable independent of the chute flap.

Hill therefore does not disclose each and every element of independent claim 1, namely, a chute flap attached to a housing of a mowing machine and being movable between a closed chute flap position and an open chute flap position, and a retaining flap moveably attached to the housing and being movable independent of the chute flap between a retaining position and a non-retaining position wherein the retaining flap can in its retaining position provide support to maintain the chute flap in either its closed or open chute flap position. As such, it is respectfully submitted that the rejection of claim 1 and its depending claims 2-8 under 35 U.S.C. § 102(b) based upon Hill should be withdrawn.

Independent claim 9, like claim 1, recites that the chute flap is attached to the housing of the mowing machine and that the retaining flap is moveably attached to the housing and is movable independent of the chute flap between a retaining position and a non-retaining position. Claim 9 additionally recites that the retaining flap is adapted to overlap at least a portion of the chute flap to maintain the chute flap

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in its closed chute flap position. The arguments set forth above with respect to claim 1 relating to the teaching of Hill, wherein mounting bracket **40** (i.e., what the Examiner refers to as the “retaining flap”) is fixedly attached to deflector **14** (chute flap) when the chute flap and retaining flap are attached to the housing, such that mounting bracket **40** and deflector **14** both rotate vertically about T-swivel cross portion **30** and both rotate horizontally about T-swivel shaft **22** (i.e., the retaining flap is not movable independent of the chute flap), apply with respect to claim 9 as well. In light of the above, it is respectfully submitted that the rejection of claim 9 and its depending claims 10-16 under 35 U.S.C. § 102(b) based upon Hill should be withdrawn.

Independent claim 17 recites a chute flap attached to a housing of a mowing machine and being movable between a closed chute flap position and an open chute flap position, and a retaining flap having a first section pivotally attached to the housing and a second section disposed at least generally perpendicularly to the first section. Claim 17 further recites the retaining flap as being movable independent of the chute flap between a retaining position and a non-retaining position wherein the second section is adapted to overlap at least a portion of the chute flap to maintain the chute flap in its closed chute flap position. With reference to Figure 3 of Hill, the Examiner contends that Hill teaches a retaining flap having first and second sections perpendicular to each other, by referencing the T-swivel **20** as having sections and the mounting bracket **40** as having “generally” perpendicular sections. Applicant respectfully disagrees.

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As shown in Figures 3 and 5 of Hill, the “first and second” sections of mounting bracket **40** are designed to be at an angle of approximately 30 to 45 degrees to one another. This design exists so that mounting bracket **40** can be fixedly attached to chute deflector **14** and the “center” section of mounting bracket **40** (the bent section between the “first and second” sections) can mount on T-swivel cross portion **30** for rotation of chute deflector **14** in a vertical direction. As such, applicant respectfully submits that the “first and second” sections of mounting bracket **40** are not “generally” perpendicular to one another, as in the present subject matter, and in fact mounting bracket **40** as designed would not function properly if these sections were generally perpendicular to one another due to the need for the angled section of mounting bracket **40** to angle downwardly for attachment to deflector **14**. Additionally, the “center” section of mounting bracket **40** is mounted on T-swivel cross portion **30**, wherein T-swivel **20** is then rotatably mounted within mower deck **12** via T-swivel shaft **22**. As such, the “first” section of mounting bracket **40** is not pivotally attached to the housing of the mowing machine as defined in claim 17 of the present subject matter.

Furthermore, the arguments set forth above with respect to claim 1 relating to the teaching of Hill, wherein mounting bracket **40** (i.e., what the Examiner refers to as the “retaining flap”) is fixedly attached to deflector **14** (chute flap) when the chute flap and retaining flap are attached to the housing, such that mounting bracket **40** and deflector **14** both rotate vertically about T-swivel cross portion **30** and both rotate horizontally about T-swivel shaft **22** (i.e., the retaining flap is not movable

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independent of the chute flap), apply with respect to claim 17 as well. Applicant respectfully submits therefore that the rejection of claim 17 and its depending claim 22 under 35 U.S.C. § 102(b) based upon Hill should be withdrawn.

Independent claim 18 is directed to a method for moving a chute apparatus of a mowing machine and recites lifting a retaining flap moveably attached to a housing on a mowing machine wherein at least a portion of the retaining flap moves in a direction at least generally vertically away from the housing, and wherein the retaining flap moves from a retaining position to a non-retaining position to allow a chute flap attached to the mowing machine to move independent of the retaining flap from a closed position to an open position whereby the chute flap provides a discharge chute.

As discussed above, mounting bracket **40** (retaining flap) of Hill is fixedly attached to deflector **14** (chute flap) when the chute flap and retaining flap are attached to the housing, such that mounting bracket **40** and deflector **14** both rotate vertically about T-swivel cross portion **30** and both rotate horizontally about T-swivel shaft **22**. As such, mounting bracket **40** moves in tandem with deflector **14** and does not move from a retaining position to a non-retaining position independent of deflector **14**. In other words, because mounting bracket **40** is fixedly attached to deflector **14**, the positioning of mounting bracket **40** does not change in relation to deflector **14** regardless of whether deflector **14** is in an open position or a closed position and there is no independent movement of the two structures. There is no teaching or suggestion in Hill of moving a retaining flap moveably attached to a

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housing from a retaining position to a non-retaining position to allow a chute flap attached to the mowing machine to move independent of the retaining flap from a closed position to an open position whereby the chute flap provides a discharge chute. As such, applicant respectfully submits that the rejection of independent claim 18 and its depending claim 19 under 35 U.S.C. § 102(b) based upon Hill should be withdrawn.

Independent claim 20 is directed to a method for moving a chute apparatus of a mowing machine and recites a step of lifting a retaining flap moveably attached to a housing on a mowing machine from a retaining position to a non-retaining position by pivoting the retaining flap along a first axis wherein at least a portion of the retaining flap moves in a direction at least generally vertically away from the housing for the retaining flap to allow a chute flap attached to the mowing machine to pivot independent of the retaining flap along a second axis from a closed position to an open position whereby the chute flap provides a discharge chute.

As discussed above with respect to claim 18, there is no teaching or suggestion in Hill of moving a retaining flap attached to a housing from a retaining position to a non-retaining position to allow a chute flap attached to the mowing machine to move independent of the retaining flap from a closed position to an open position whereby the chute flap provides a discharge chute. Claim 20 further recites that the first axis on which the retaining flap is pivoted and the second axis on which the chute flap is pivoted are substantially perpendicular to one another. As discussed above, mounting bracket 40 (retaining flap) of Hill is fixedly attached to

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deflector **14** (chute flap) when the chute flap and retaining flap are attached to the housing, such that mounting bracket **40** and deflector **14** both rotate vertically about T-swivel cross portion **30** and both rotate horizontally about T-swivel shaft **22**. As such, mounting bracket **40** moves in tandem with deflector **14**, and therefore Hill does not provide a retaining flap that pivots along a first axis that is substantially perpendicular to a second axis to which a chute flap pivots, as recited in claim 20 of the present subject matter. Therefore, applicant respectfully submits that the rejection of independent claim 20 and its depending claim 21 under 35 U.S.C. § 102(b) based upon Hill should be withdrawn.

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CONCLUSION

In light of the above amendments and remarks, it is respectfully submitted that the present application is now in proper condition for allowance, and an early notice to such effect is earnestly solicited.

If any small matter should remain outstanding after the Patent Examiner has had an opportunity to review the above amendments and remarks, the Patent Examiner is respectfully requested to telephone the undersigned patent attorney in order to resolve these matters and avoid the issuance of another Official Action.

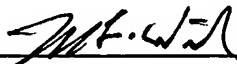
DEPOSIT ACCOUNT

The Commissioner is hereby authorized to charge any fees associated with the filing of this correspondence to Deposit Account No. **50-0426**.

Respectfully submitted,

JENKINS, WILSON & TAYLOR, P.A.

Date: Oct. 4, 2005

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